

By: Collier

H.B. No. 334

A BILL TO BE ENTITLED

AN ACT

relating to the consideration by employers of the consumer credit reports or other credit information of employees and applicants for employment; providing civil and administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 52, Labor Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. CONSIDERATION OF CONSUMER CREDIT REPORTS

Sec. 52.081. DEFINITIONS. In this subchapter:

(1) "Applicant" means a person who has made an oral or written application with an employer, or has sent a resume or other correspondence to an employer, indicating an interest in employment.

(2) "Commission" means the Texas Workforce Commission.

(3) "Consumer" means an individual whose credit information is used or whose credit score is computed.

(4) "Consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(5) "Credit information" means any credit-related information derived from a credit report or found in a credit

1 report. The term does not include information that is not  
2 credit-related, regardless of whether that information is  
3 contained in a credit report.

4 (6) "Credit report" means any written, oral, or other  
5 communication of information by a consumer reporting agency that  
6 bears on a consumer's creditworthiness, credit standing, or credit  
7 capacity.

8 (7) "Employee" and "employer" have the meanings  
9 assigned by Section 21.002.

10 Sec. 52.082. RULES. The commission may adopt rules as  
11 necessary to implement this subchapter.

12 Sec. 52.083. EFFECT ON OTHER LAW. This subchapter does not  
13 limit or affect the rights, remedies, or procedures available to an  
14 individual who alleges an unlawful employment practice prohibited  
15 under federal law, another state law, or an order or ordinance of a  
16 political subdivision of this state.

17 Sec. 52.084. PROHIBITED ACTS BY EMPLOYER. An employer may  
18 not:

19 (1) directly or indirectly require, request, suggest,  
20 or cause an employee or applicant, as a condition of employment, to:

21 (A) submit a credit report or other credit  
22 information; or

23 (B) authorize the employer's access to the  
24 employee's or applicant's credit report or other credit  
25 information;

26 (2) use, accept, refer to, or inquire concerning the  
27 employee's or applicant's credit report or other credit

1 information; or

2 (3) discharge, discipline, discriminate against, or  
3 deny employment or promotion to an employee or applicant:

4 (A) on the basis of the employee's or applicant's  
5 credit report or other credit information; or

6 (B) because the employee or applicant:

7 (i) refuses, declines, or fails to submit a  
8 credit report or other credit information; or

9 (ii) refuses, declines, or fails to  
10 authorize the employer access to the employee's or applicant's  
11 credit report or other credit information.

12 Sec. 52.085. RETALIATION AND COERCION PROHIBITED. (a) An  
13 employer may not discriminate against an employee or applicant  
14 because the individual:

15 (1) opposes any act or practice prohibited by this  
16 subchapter;

17 (2) makes or files a charge in connection with an act  
18 or practice prohibited by this subchapter; or

19 (3) assists, testifies, or participates in any manner  
20 in an investigation, proceeding, or hearing conducted under this  
21 subchapter.

22 (b) An employer may not coerce, intimidate, threaten, or  
23 interfere with an employee or applicant in the exercise or  
24 enjoyment of, or because the employee or applicant for employment  
25 has exercised, enjoyed, assisted, or encouraged the exercise or  
26 enjoyment of, a right granted or protected by this subchapter.

27 Sec. 52.086. ADMINISTRATIVE PENALTY. (a) An employer

1 commits an administrative violation if the employer violates this  
2 subchapter.

3 (b) The penalty for a violation under this section may not  
4 exceed \$9,000. In assessing a penalty under this section, the  
5 commission shall consider:

6 (1) prior violations of this subchapter by the  
7 employer;

8 (2) the severity of the violation; and

9 (3) any other factor the commission determines to be  
10 relevant.

11 Sec. 52.087. CIVIL ACTION BY EMPLOYEE OR APPLICANT. (a) An  
12 employee or applicant aggrieved by a violation of this subchapter  
13 may bring a civil action to enforce rights protected by this  
14 subchapter, including an action for appropriate injunctive relief,  
15 in the district court in the county in which the alleged violation  
16 occurred or in which the alleged violator's residence or principal  
17 place of business is located.

18 (b) An action under this section must be brought not later  
19 than the third anniversary of the date of the violation.

20 (c) The employer of an employee or applicant who prevails in  
21 a civil action under this section is liable to the affected employee  
22 or applicant for damages equal to the amount of any wages, salary,  
23 employment benefits, or other compensation denied or lost to the  
24 employee or applicant by reason of the violation or, if wages,  
25 salary, employment benefits, or other compensation has not been  
26 denied or lost, any actual monetary losses sustained by the  
27 employee or applicant as a direct result of the violation.

1       (d) An employer described by Subsection (c) is also liable  
2 for equitable relief as appropriate, including employment,  
3 reinstatement, and promotion.

4       (e) In addition to any judgment awarded to an employee or  
5 applicant, the court may require the employer to pay reasonable  
6 attorney's fees, reasonable expert witness fees, and other costs.

7       Sec. 52.088. CIVIL ACTION BY COMMISSION. (a) The  
8 commission may bring an action to restrain violations of this  
9 subchapter.

10       (b) In an action brought under this section, the court may:

11           (1) issue a temporary or permanent restraining order  
12 or injunction to require compliance with this subchapter; and

13           (2) order any equitable relief as appropriate,  
14 including employment, reinstatement, and promotion.

15       Sec. 52.089. NONAPPLICABILITY. (a) This subchapter does  
16 not apply to:

17           (1) an employee in or an applicant for:

18                   (A) a position for which disclosure or  
19 consideration of a credit report or other credit information is  
20 required by law or by a self-regulated industry organization;

21                   (B) a position as a peace officer as defined by  
22 Article 2.12, Code of Criminal Procedure;

23                   (C) a position that requires a surety or other  
24 type of bond;

25                   (D) a position that requires federal or state  
26 security clearance;

27                   (E) a position that is nonclerical and that has

1 regular access to trade secrets, intelligence information, or  
2 national security information;

3 (F) a managerial position which involves setting  
4 the direction or control of a business or a division, unit or agency  
5 of a business, and that has financial responsibility over an  
6 employer's funds or assets worth at least \$10,000; or

7 (G) a managerial position that:

8 (i) involves setting the direction or  
9 control of a business or a division, unit or agency of a business,  
10 and that involves digital security systems, including controlling  
11 access to all parts of an employer's computer system; and

12 (ii) does not include all members in an  
13 employer's information technology department or a person who has  
14 access to a computer system or network available to employees  
15 generally; or

16 (2) an employer engaged in financial services.

17 (b) The exemptions provided by Subsection (a)(1) apply only  
18 to the specific position that an employee is in or for which an  
19 applicant applies and not the employee or the applicant generally.  
20 An employer or industry as a whole is not exempt from the  
21 requirements of this subchapter.

22 (c) For purposes of this section:

23 (1) "Employer engaged in financial services" means:

24 (A) a bank, savings and loan association or  
25 savings bank, credit union, or other depository institution or its  
26 subsidiaries or affiliates;

27 (B) a mortgage banker or residential mortgage

1 loan company;

2 (C) a securities firm or registered financial  
3 advisory firm;

4 (D) a regulated loan company; or

5 (E) an insurance company or insurance agency.

6 (2) "Trade secret" means:

7 (A) confidential or proprietary business  
8 information; or

9 (B) information, including a formula, pattern,  
10 compilation, program, device, method, technique, or process that:

11 (i) derives independent economic value,  
12 actual or potential, from not being generally known to, and not  
13 being readily ascertainable by proper means by, other persons who  
14 could obtain economic value from the disclosure or use of the  
15 information; and

16 (ii) is the subject of efforts that are  
17 reasonable under the circumstances to maintain its secrecy.

18 SECTION 2. This Act applies only to an adverse employment  
19 action that is taken by an employer against an employee or applicant  
20 for employment or other employer conduct that occurs on or after  
21 January 1, 2018. Action taken by an employer or other conduct that  
22 occurs before January 1, 2018, is governed by the law in effect  
23 immediately before the effective date of this Act, and the former  
24 law is continued in effect for that purpose.

25 SECTION 3. This Act takes effect September 1, 2017.